IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO. 35029 of 1998

Between:

Bapurao J. Naik, S/o J.R.Naik, Retired Record Assistant, V.V.College, Jambagh, Hyderabad.

..... PETITIONER

AND

1. The Commissionerof Collegiate Education, Andhra Pradesh, Hyderabad.
2. V.V.College, represented by its Secretary and Correspondent, Jambagh, Hyderabad.
3. State of Andhra Pradesh, represented by its Secretary, EducationDepartment, Secretariat, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction especially one in the nature of Mandamus (i) declare the action of the authorities in not paying the salaries due to the petitioner from 28.12.1988 with all the attendant benefits as illegal, arbitrary and offends Articles 14, 16 and 21 of the Constitution of India (ii) direct the respondent to pay the salaries due to the petitioner from 28.12.1988 to the date of his retirement i.e., 31.07.1998 by granting the arrears of salary, emoluments and other attendant benefits, including the revision of pay scales, (iii) direct the respondents to settle the pension and pensionary benefits on the basis of the above pay fixation, and (iv) direct the respondents to grant interest @ 18% per annum on the amounts due to the petitioner.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 and 3: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.2: Mr. Vilas V. Afzal Purkar.

The Court made the following :

ORDER:

It seems, the petitioner, while working as Record Assistant in the 2nd respondent-College, was suspended from service with effect from 28.12.1988 on the allegation of absenteeism. Thereafter, the services of the petitioner were terminated with effect from 04.01.1990 subject to approval by the competent authority. However, before approving the proposal of termination by the competent authority, the petitioner was reinstated into service on 23.03.1994, as he could not have been kept under suspension for three months as per law. In the meanwhile, the petitioner filed Writ Petition No.21172 of 1994 seeking direction from this Court to declare the action of the authorities in keeping him under suspension for more than two months as without jurisdiction and to declare that he is entitled to be paid salaries due to him with effect from 28.12.1988 and continued to be paid from month to month without reference to the disciplinary proceedings and also direct the respondents to pay the salaries due to him with effect from 28.12.1988 with all increments and other monetary benefits.

The said Writ Petition was disposed of on 16th April, 1996 with the following direction:

> "As I see it, there is no valid order of termination, as the approval was given on 09.02.1996 in respect of a proposal given on 04.01.1990, whereas the petitioner was reinstated thereafter on 23.03.1994, specifically stating that the disciplinary proceedings will continue. Consequential proceedings as well as termination order appears to be missing at present. Therefore, I take it that the petitioner is still in service. As long as he is in service, he has to be paid the salary until he is actually terminated. The respondent management is directed to prepare the proposals and get the aid from the Government which shall not be denied and pay the salary to the petitioner in accordance with the rules.
>
> With this direction, the writ petition is disposed of."

However, aggrieved by the same, the petitioner carried the matter in Writ Appeal No.739 of1996. The said Writ Appeal was disposed of with the following observations;

> "Heard.
>
> Facts as set out reveal that while in service as a teacher in V.V.College, (4th respondent) petitioner/appellant was suspended on 12.12.1989 on the allegation that he was involved in a criminal offence. However, a decision also was taken to terminate his services and the proposal to the said effect was sent to the Government on04.01.1990. The Government's approval (competent authority) to the removal order has come onlyon09.02.1996. The grievance of the petitioner/appellant is that while the matter remained pending before the competent authority since he was reinstated on 24.03.1994, the order of suspension merged into the reinstatement and as no independent decision is shown to have been taken in respect of the period of suspension he is entitled to the emoluments from the date of suspension at least up to the date of the alleged termination. Learned Single Judge was accepted the above. The instant appeal, in our opinion has been filed under misapprehension. However, the appellant is entitled to take recourse to appeal against the alleged termination from service and salary from 12.12.1989 up to 09.02.1996. Learned Single Judge's direction, we are informed, has not been carried out. We observe that unreasonable delay in carrying out the above will not be justifiable at all."

During the pendency of the Writ Petition, the proposal of termination of the petitioner from service, dated 04.01.1990, passed by the management, was approved on 09.02.1996 by the competent authority. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The Secretary to Government by G.O.Rt.No.523, Education (C.E.II-2) Department, dated 27.04.1998 allowed the appeal and directed the management to reinstate the petitioner into service and pay him all consequential benefits. Thereafter, the petitioner was reinstated with effect from 26.06.1998 in pursuance to the appellate order and on attaining the age of superannuation, the petitioner retired from service on 31.07.1998. The trouble of the writ petitioner was not ended there. After the disposal of the appeal and even after his retirement, his salaries from 28.12.1988 till the date of his retirement were not paid, though he was reinstated by the management and also again reinstated by the

second time after the disposal of appeal by the Government. Therefore, the present writ petition is filed seeking the following reliefs;

> " i) declare the action of the authorities in not paying the salaries due to the petitioner from 28.12.1988 with all the attendant benefits as illegal, arbitrary and offends Articles 14, 16 and 21 of the Constitution of India;
>
> ii) direct the respondents topay the salaries due to the petitioner from 28.12.1988 to the date of his retirement i.e., 31.07.1998 by granting the arrears of salary, emoluments and other attendant benefits, including the revision of pay scales;
>
> iii) direct the respondents to settle the pension and pensionary benefits on the basis of the above pay fixation;
>
> iv) direct the respondents to grant interest @ 18% per annum on the amounts due to the petitioner."

In the order dated 16th April, 1996 in W.P.No.21172 of 1994, the learned Single Judge of this Court has categorically stated that as long as the petitioner was in service, he has to be paid the salary until he was actually terminated and the respondent management was directed to prepare the proposals and get the aid from the Government which shall not be denied and pay the salary to the petitioner in accordance with the rules. Thus, there was a clear-cut direction that the bills shall be prepared by the Management and the authorities shall pass the same to enable the management to pay the salaries to the petitioner. It is also an undisputed fact that the petitioner was working in a post, which was admittedly, in grant-in-aid.

The respondents 1 and 3 have filed their counter and stated that the Management is under obligation to implement the said orders. Except this, they have not stated that they are not liable to clear the bills submitted by the respondent No.2-College.

The second respondent filed a detailed counter asserting that the post held by the petitioner was admittedly in grant-in-aid and the respondents 1 and 3 are liable to clear the bills and, in fact, as per the directions in G.O.Rt.No.523, Education (C.E.II-2) Department, dated 27.04.1998, he has prepared the bills and sent the same to the competent authority for its approval and the competent authority shall not reject the said bills only on the ground that the Management is responsible for payment of the salaries.

Learned Government Pleader strenuously contends that since the termination order passed by the Management was found to be illegal, the Management alone is responsible for payment of salaries.

It is interesting to note that, in fact, the proposal for termination, which was made on 04.01.1990, was approved on 09.02.1996. Once the termination is approved by the competent authority, which was of course set aside by the Government in appeal, it cannot be said that the Management alone is responsible for payment of salaries since it was an illegal termination by the Management.

In view of the above, I am of the considered opinion that the petitioner is entitled for the salaries and other benefits as per the orders of the appellate authority in G.O.Rt.No.523, Education (C.E.II-2) Department, dated 27.04.1998. If the proposals are not sent by the Management so far, the Management is directed to send the proposals within four weeks from the date of receipt of a copy of this order and on such proposals being sent by the Management, the respondents 1 and 3 shall clear the bills within two months thereafter.

Accordingly, the Writ Petition is disposed of. No costs.

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10.09.2004

Nsr

To

1.The Commissionerof Collegiate Education, Andhra Pradesh, Hyderabad.

2. The Secretary and Correspondent, V.V.College, Jambagh, Hyderabad.

3. The Secretary, Education Department, State of Andhra Pradesh, Secretariat, Hyderabad.

4. Two CCs to G.P for Higher Education, High Court of A.P., Hyderabad (OUT)

5. Two CD copies.